

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

LOIS SHARER and STEVE HUMBER,

04-CV-1690-BR

Plaintiffs,

OPINION AND ORDER

v.

STATE OF OREGON, PETER
OZANNE, and PETER GARTLAN,

Defendants.

STEVE HUMBER

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Plaintiff, *Pro Se*

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BROWN, Judge.

This matter comes before the Court on Plaintiff Steve Humber's Motion for Reconsideration (#222) of Order on Motion for Judgment on the Pleadings.

For the reasons that follow, the Court **GRANTS** Humber's Motion for Reconsideration, and, having reconsidered the merits of Plaintiff's arguments, the Court **DENIES** Humber's request for the Court to alter or to amend its October 31, 2007, Opinion and Order.

BACKGROUND

On November 18, 2004, Humber and Lois Sharer filed a Complaint seeking damages and injunctive relief on the grounds that Defendants violated the ADA, 42 U.S.C. §§ 12112 and 12203; the Rehabilitation Act, 29 U.S.C. § 794; and medical-leave laws when they (1) failed to accommodate Sharer's disabilities, (2) terminated Sharer and Humber's employment because of Sharer's disability, (3) perceived Sharer as being disabled, (4) terminated Sharer and Humber's employment in retaliation for asserting their rights under the ADA, (5) terminated Humber's employment because he was associated with Sharer, and (6) terminated Humber's employment for opposing Defendants' unlawful employment acts or practices. In addition, Sharer and Humber alleged Defendants wrongfully discharged them in

retaliation for taking medical leave and for asserting their rights under medical-leave laws.

On June 27, 2005, the Court granted Defendants' Motion to Dismiss as to (1) Sharer and Humber's claims under the ADA against Defendants Peter Ozanne and Peter Gartlan except for their claims for prospective injunctive relief, (2) Sharer and Humber's claims under the ADA against the State of Oregon, (3) Sharer and Humber's claims under the Rehabilitation Act against Ozanne and Gartlan, and (4) Sharer and Humber's claims against all Defendants for wrongful discharge.

On September 2, 2005, Sharer and Humber filed a First Amended Complaint in which they alleged Defendants Ozanne and Gartlan violated the ADA and the State violated the Rehabilitation Act when it (1) failed to accommodate Sharer's disability and (2) terminated Sharer and Humber's employment. Sharer and Humber also alleged Defendants discharged them in retaliation for taking medical leave and for asserting their rights under medical-leave laws in violation of 29 C.F.R. § 825.220.

On March 14, 2006, Defendants filed a motion seeking summary judgment as to Sharer and Humber's claims under the Rehabilitation Act on the ground that the agency that employed Sharer and Humber does not receive federal funds. On June 28, 2006, the Court granted Defendants' Motion.

On August 14, 2006, Sharer and Humber filed a Second Amended Complaint in which they alleged (1) Ozanne and Gartlan violated the ADA by terminating Sharer and Humber's employment because of Sharer's disabilities and/or because Humber was associated with Sharer and/or in retaliation against Humber for opposing Defendants' unlawful acts or practices; (2) Defendants discharged Sharer and Humber for asserting their rights under the Family Medical Leave Act (FMLA), 29 U.S.C. § 2615; (3) Ozanne and Gartlan deprived Sharer and Humber of their rights to equal protection; (4) Defendants disciplined Humber in retaliation for disclosing unlawful employment practices in violation of Oregon's Whistleblower Statute, Oregon Revised Statutes § 659A.203; and (5) Defendants discharged Sharer in retaliation for her invocation or utilization of procedures available to her pursuant to Oregon Revised Statutes §§ 659A.100-145.

On December 4, 2006, Defendants moved for summary judgment on Sharer and Humber's equal-protection claims, Sharer's FMLA claim, Humber's whistleblower claim, and Sharer's retaliatory-discharge claim. On March 30, 2007, the Court granted Defendants' Motion and noted the only claims remaining for trial at that time were Sharer's ADA claim against Ozanne and Gartlan, Humber's ADA claim against Ozanne and Gartlan limited to prospective injunctive relief on the grounds that they terminated Humber's employment because he associated with Sharer and/or in

retaliation for opposing their unlawful employment practices under the ADA, and Humber's FMLA claim.

On July 11, 2007, the parties filed a stipulated dismissal of Sharer's remaining claim. On August 10, 2007, the parties filed their Pretrial Order in which Humber alleges (1) ADA claim against Ozanne and Gartlan limited to prospective injunctive relief on the grounds that they terminated Humber's employment because he associated with Sharer and/or in retaliation for opposing their unlawful employment practices under the ADA and (2) Defendants discharged Humber for asserting Sharer's rights under the FMLA. Humber seeks prospective injunctive relief of reinstatement on his ADA claim and damages on his FMLA claim.

On August 24, 2007, Defendants filed a Motion for Judgment on the Pleadings as to Humber's remaining FMLA and ADA retaliation claims. On September 26, 2007, the Court heard oral argument and denied Defendants' Motion as to Humber's claim under the ADA. At the hearing, Defendants asserted Humber would not be entitled to a jury trial on his claim under the ADA if the Court granted Defendants' Motion as to Humber's FMLA claim because Humber seeks only equitable relief on his ADA claim. The Court directed the parties to brief the issue as to whether Humber would have the right to a jury trial if the Court dismissed Humber's FMLA claim.

On October 31, 2007, the Court issued an Opinion and Order granting summary judgment to Defendants as to Humber's FMLA claim.

On November 5, 2007, Humber filed a Motion for Reconsideration of Order on Motion for Judgment on the Pleadings seeking reconsideration of the Court's October 31, 2007, Opinion and Order.

DISCUSSION

Humber does not raise any new arguments in his Motion for Reconsideration and generally reiterates his previous arguments regarding his claims against Defendants for the alleged violation of his rights under FMLA. The Court's October 31, 2007, Opinion and Order thoroughly addressed Humber's arguments. The Court, therefore, declines to amend its October 31, 2007, Opinion and Order.

CONCLUSION

For these reasons, the Court **GRANTS** Humber's Motion for Reconsideration (#222) and, having reconsidered the merits of Humber's arguments, the Court **DENIES** his request for the Court

to alter or to amend its October 31, 2007, Opinion and Order.

IT IS SO ORDERED.

DATED this 20th day of November, 2007.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge